



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 10692532

Date: SEP. 14, 2021

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a senior engineer process engineer, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits additional documentation and a brief asserting that he is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).¹ *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion², grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

² See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.³

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree.⁴ The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

At the time of filing, the Petitioner was working as a senior process engineer at [REDACTED].⁵ In this position, the Petitioner "works on equipment evaluations and the optimization and development of unit processes to fulfill the performance requirements of devices," and "proposes to continue his work on the development and analysis of materials for [REDACTED]." In the submitted job description for the Petitioner's current position, it stated that [REDACTED] was seeking a "new or recent PhD or entry level engineer" and the primary responsibilities of the position is to "conduct equipment evaluations with major [REDACTED] vendors, define initial tooling needs for start-up, develop and/or optimize unit processes in order to meet the overall technology roadmap and device performance requirements for [REDACTED] and beyond."

The Petitioner further indicated that he intends to continue to work as a senior process engineer in the field of [REDACTED] focusing on the development and analysis of materials for [REDACTED] and support the manufacturing of [REDACTED]. The Director noted that the Petitioner did not establish that his proposed endeavor would have national or global implications, or a broader prospective impact upon the field, or original innovations that contribute to advancements. Although the Petitioner's statements reflect his intention to provide valuable developments in [REDACTED] for the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of her proposed endeavor under the first prong of the *Dhanasar* analytical framework.⁶

On appeal, the Petitioner states that the proposed endeavor involves both his ongoing employment and the additional research projects he outlined. In addition, the three research projects he proposes to study are: (1) the [REDACTED] materials; (2) [REDACTED] phenomena; and, (3) the interface between [REDACTED] materials and [REDACTED] devices. In addition, the Petitioner states that the evidence also shows that [the Petitioner's] work to develop more efficient and environmentally-friendly [REDACTED] material aligns with U.S. priorities such as reducing the cost of [REDACTED] limiting harmful greenhouse gas emissions."

³ See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

⁴ The Petitioner received a Ph.D. in Physics from the University of [REDACTED] in January 2018.

⁵ The Petitioner previously served as a research assistant at the University of [REDACTED] from August 2012 until January 2018.

⁶ While we may not discuss every document submitted, we have reviewed and considered each one.

On appeal, the Petitioner also states that “[c]onsidering that [the Petitioner’s] past accomplishments are closely linked to the topics of his future research, any evidence discussing the national importance of his prior work is surely germane to his proposed endeavor.”

In determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead we focus on the “the specific endeavor that the foreign national proposes to undertake.” *See Dhanasar*, 26 I&N Dec. at 889. We further noted that “we look for broader implications” of the proposed endeavor and that “[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field.” *Id.* We also stated that “[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance.” *Id.* at 890. It is important to note that the shortage of physical therapists in the United States does not render her proposed endeavor nationally important under the *Dhanasar* framework. In fact, such shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process.

To satisfy the national importance requirement, the Petitioner must demonstrate the “potential prospective impact” of his work. The Petitioner stated that his employer is the [redacted] [redacted] in the world,” and working at the company will keep the U.S. competitive in the global market in terms of manufacturing [redacted]. While the Petitioner’s employer may be successful, it is not clear the direct influence the Petitioner will have in the national impact on the [redacted] field as one employee of a company. Without more information regarding the organizational structure of the company and the Petitioner’s role within that structure, the Petitioner has not demonstrated the potential prospective impact of his work.

On appeal, the Petitioner states that he “contributes to national interests through his employment at a U.S. company in a highly competitive global market” and that “technological progress gained through [redacted]’s employment is a matter of national interest.” However, no evidence is submitted to support these assertions. In his personal statement, the Petitioner states: “My job is to improve the effectiveness and efficiency of our internal processes for high volume [redacted] manufacturing using statistical tools, Design of Experiment, data-driven decision making and systematic problem solving.” While *Matter of Dhanasar* identifies improved manufacturing processes as a possible way to demonstrate the national importance of a proposed endeavor, here the record lacks documentation showing how the Petitioner’s work on internal processes at his employer rises to the level of national importance.

In addition, the Petitioner provides information regarding three research projects he proposes to study in the future. The Petitioner provided a very brief description of these three projects which all relate to the use of [redacted]. While the documentation on [redacted] and climate change demonstrate the substantial merit of this proposed research, the Petitioner submitted no documentation specifically addressing the importance of his specific proposed endeavor. For example, in the statement submitted in response to the Director’s RFE and which sets out his future research goals, the Petitioner indicates that:

The most used materials in most recent [redacted] prototypes are [redacted] for [redacted] applications and [redacted] and

[redacted] applications. I will synthesize these materials by a hydrothermal method and form these materials with various particle sizes, so that I can study the dependence of the [redacted] effect on the particle sizes.

In support of the national importance of his work, the Petitioner submitted part of an Environmental Protection Agency document discussing motor vehicle [redacted] systems and the move to replace [redacted] with substitutes that have less potential to contribute to global warming and [redacted]. A one-page brochure on [redacted] from the United States Department of Agriculture was also submitted, as was an incomplete article from the Washington Post discussing the impact of climate change on a lake in New Jersey. However, none of these documents reference [redacted] or otherwise address the national importance of the Petitioner's proposed research. It is the Petitioner's burden to submit evidence that sufficiently corroborates its claims. Statements made without supporting documentation are of limited probative value and are insufficient to satisfy the Petitioner's burden of proof. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998).

In summary, the Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong, and therefore is not eligible for a national interest waiver. We reserve our opinion regarding whether the record satisfies the second or third *Dhanasar* prong.

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that the Petitioner has not established eligibility for, or otherwise merits, a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.